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HOUSE OF REPRESENTATIVES
REPORT
101-106

IMPROVING RECRUITMENT AND RETENTION OF NURSES IN THE DEPARTMENT OF VETERANS AFFAIRS AND TO AUTHORIZE PROCREATIVE SERVICES FOR CERTAIN DISABLED VETERANS

JUNE 22, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. MONTGOMERY, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany H.R. 1199]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1199) to improve the recruitment and retention of nurses in the Department of Veterans Affairs by providing greater flexibility in the pay system for those nurses, having considered the same, report favorably thereon with amendments, by unanimous voice vote, and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. RESTRUCTURING OF NURSE GRADE LEVELS AND PAY.

(a) NEW GRADES ESTABLISHED.—(1) The Secretary of Veterans Affairs shall restructure the current nurse grades of the Department of Veterans Affairs so as to provide four grade levels for nurses employed by that Department under section 4104(1) of title 38, United States Code. Those grade levels shall be established with the following relationships to the current nurse grades and to pay grades under the General Schedule under title 5, United States Code.

New Grades	*Current Grades*	*Grades*
1. Entry grade—(junior and associate grades)	GS	6–10
2. Intermediate grade—(full and intermediate grades)	GS	9–12
3. Senior grade—(senior and chief grades)	GS	12–14
4. Director grade—(assistant director and director grades)	GS	14–16

(2) For purposes of paragraph (1), the term "current nurse grades" means the grades in effect on the effective date of this Act for nurses employed by the Department of Veterans Affairs under section 4104(1) of title 38, United States Code.

(b) PAY STRUCTURE AND ADMINISTRATION FOR NEW NURSE GRADES.—Subchapter I of chapter 73 of title 38, United States Code, is amended by inserting after section 4107 the following new section:

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"§4107A. Nurses: grades, rates of pay, and administration of pay

"(a) The Secretary shall maintain four grade levels for nurses employed by the Department under section 4104(1) of this title. Those grade levels shall have the following relationships to pay grades under the General Schedule under title 5.

"Nurse Grades	*GS Grades*
Entry grade	GS 6–10
Intermediate grade	GS 9–12
Senior grade	GS 12–14
Director grade	GS 14–16

"(b) The rates of basic pay for those nurse grades shall, for each grade, be established pursuant to this section. The minimum and maximum rates of basic pay for each nurse grade shall be the lowest minium, and the highest maximum, respectively, rate of pay for the General Schedule grades corresponding to that nurse grade.

"(c)(1) The range of basic pay for each nurse grade shall be divided into 20 equal increments, known as 'steps'. Rates of pay within a grade shall be established only as full steps. Any increase within a grade in the rate of basic pay payable to a nurse shall be by one or more of such step increments. The director of each medical center may (subject to this section) determine the standards and criteria for such increases.

"(2) Regulations prescribed under this section shall provide—

"(A) that the rate of basic pay of each nurse of the Department employed under section 4104(1) of this title shall be increased at least one step increment in that nurse's grade not less often than every two years that the nurse holds that grade (unless the Secretary determines that the performance of the nurse during the preceding two years has not been satisfactory); and

"(B) that whenever a nurse is given a new duty assignment which is a promotion, the rate of basic pay of that nurse shall be increased at least one step increment in that nurse's grade.

"(3) A nurse of the Department serving in a head nurse position shall while so serving receive basic pay at a rate two steps above the rate that would otherwise be applicable to the nurse.

"(d) A nurse who is promoted to the next higher nurse grade shall be appointed in that grade at a rate of basic pay that is greater than the rate of basic pay applicable to the nurse in the lower grade.

"(e) Under regulations which the Secretary prescribes for the administration of this section, the director of a medical center of the Department may provide step promotions within a grade, or may pay a cash bonus, to a nurse employed at the medical center who has qualifications, experience, or achievement which the director determines exceed the standards for the nurse's grade. In making such a determination, the director shall consider the following:

"(1) Service with relevant professional committees or groups.

"(2) Service in a responsible office in a professional nursing society.

"(3) Educational attainment (including certification).

"(4) Publication of articles in professional journals.

"(5) Exemplary job performance.

"(6) Other appropriate evidence of professional stature.

"(f)(1) The Secretary shall provide (in regulations prescribed for the administration of this section) that the director of a medical center of the Department, in appointing a person under section 4104(1) of this title as a nurse for employment at that medical center, may appoint that nurse at a rate of basic pay in excess of the minimum rate of basic pay applicable to the grade in which the appointment is made (but not in excess of the maximum rate of basic pay for that grade) without a requirement for prior approval at any higher level of authority within the Department if the director determines that it is necessary to do so in order to obtain the services of nurses employed under section 4104(1) of this title in that nurse grade at that medical center.

"(2) Such a determination may be made by the director of a medical center only in order—

"(A) to provide pay in an amount competitive with the amount of the same type of pay paid to nurses at non-Federal facilities in the same labor market;

"(B) to achieve adequate staffing at the medical center concerned; or

"(C) to recruit nurses with specialized skills, especially nurses with skills which are especially difficult or demanding.

"(3) Whenever the director of a medical center exercises authority under this subsection without prior approval at a higher level of authority within the Department, the director shall—

"(A) document in writing the reasons for employing the nurse concerned at a rate of pay in excess of the minimum rate of basic pay applicable to the grade in which the nurse is appointed (and shall retain that document on file); and

"(B) in the first budget submission of the director prepared after the nurse is employed, include documentation for the need for such increased rates of basic pay.

"(g) A nurse employed under section 4104(1) of this title who (without a break in employment) transfers from one medical center of the Department to another may not be reduced in grade. The rate of basic pay of such a nurse may be established at the new medical center in a manner consistent with the practices at that medical center for a nurse of that grade.".

(c) REPEAL OF LIMITATION ON HOURLY RATE OF OVERTIME PAY.—Section 4107(e)(5) of such title is amended by striking out ", not to exceed" in the first sentence and all that follows through "Nurse Schedule".

(d) CONSOLIDATION OF NURSE PAY PROVISIONS IN NEW NURSE PAY SECTION.—(1) Subsection (e) of section 4107 of such title (as amended by subsection (c)) is—

(A) transferred to the end of section 4107A of such title, as added by subsection (b);

(B) redesignated as subsection (h); and

(C) amended by striking out "the rate of basic pay provided for nurses in subsection (b)(1) of this section" in paragraph (1) and inserting in lieu thereof "basic pay";

(2) Subsection (h) of section 4107 of such title is—

(A) transferred to the end of section 4107A of such title (as amended by paragraph (1));

(B) redesignated as subsection (i); and

(C) amended in paragraph (2)—

(i) by striking out "one thousand two hundred and forty-eight" in subparagraph (B) and inserting in lieu thereof "1,248"; and

(ii) in subparagraph (C)—

(I) by striking out "subsection (e)(5)" both places it appears and inserting in lieu thereof "subsection (h)(5)"; and

(II) by striking out "subsection (e)" and inserting in lieu thereof "subsection (h)".

(e) CONFORMING AND CLERICAL AMENDMENTS.—(1) Section 4107(b) of such title is amended by striking out the items under the heading "NURSE SCHEDULE" and inserting in lieu thereof the following:

"Entry grade.
"Intermediate grade.
"Senior grade.
"Director grade.".

(2) The table of sections at the beginning of chapter 73 of such title is amended by inserting after the item relating to section 4107 the following new item:

"4107A. Nurses: grades, rates of pay, and administration of pay.".

SEC. 2. PROCREATIVE SERVICES FOR MARRIED VETERANS WITH SERVICE-CONNECTED DISABILITIES WHICH IMPAIR THEIR ABILITY TO PROCREATE.

Section 612 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(k) The Secretary may provide to a married veteran (and, if necessary, the veteran's spouse) procreative services to the extent reasonably necessary to overcome the effects of a service-connected disability of the veteran which prevents or impairs the ability of the veteran and the veteran's spouse to conceive a child. Such services may not include—

"(1) procedures to conceive a child using gametes of an individual other than the veteran or the veteran's spouse;

"(2) procedures to conceive a child through in vitro fertilization; or

"(3) the services of a surrogate gestational mother.".

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on October 1, 1989.

Amend the title so as to read:

A bill to amend title 38, United States Code, to improve recruitment and retention of nurses in the Department of Veterans Affairs by providing greater flexibility

in the pay system for those nurses and to authorize the Secretary of Veterans Affairs to provide certain procreative services for married veterans with service-connected disabilities which impair their ability to procreate.

INTRODUCTION

On April 12, 1989, the Subcommittee on Hospitals and Health Care held a hearing to receive testimony on H.R. 1199, a bill introduced by Hon. Joseph P. Kennedy II to provide greater flexibility in the pay schedule for nurses through use of pay bands rather than the wage ladders currently used for Department of Veterans Affairs (DVA) nurses. Testimony was received from the Department of Veterans Affairs; the Blinded Veterans' Association; the Veterans of Foreign Wars; the Paralyzed Veterans of America; the Disabled American Veterans; The American Legion; the American Nurses Association; and the Nurses Organization of the VA.

Testimony was received by the Subcommittee on April 26, 1989 on H.R. 1931, also introduced by Mr. Kennedy, to provide certain procreative services for married service-connected disabled veterans. Witnesses at that hearing were the Department of Veterans Affairs; the American Psychiatric Association; the Disabled American Veterans; the Veterans of Foreign Wars; the Paralyzed Veterans of America; The American Legion; and, the American Ex-Prisoners of War, Inc.

Field hearings were held at Northport, New York and West Haven, Connecticut on May 15, 1989 on the effect of budget constraints upon the delivery of health care as well as recruitment and retention problems. Testimony was received at Northport from the Department of Veterans' Affairs; the Executive Associate Dean of the School of Medicine at the State University of New York at Stoneybrook which is affiliated with the Northport DVA Medical Center, and public witnesses. Testimony was received at West Haven from the DVA; the Associate Dean for Government and Community Affairs at the Yale University School of Medicine; the Commissioner of the Connecticut Department of Veterans' Affairs; the Commandant of the Connecticut Veterans Home and Hospital; the Veterans of Foreign Wars; the Vietnam Veterans of America; the Eastern Paralyzed Veterans Association; the Blinded American Veterans Foundation; the American Ex-Prisoners of War; the Concerned Veterans of Connecticut; the Jewish War Veterans; the Polish American Veterans; The American Legion; the Disabled American Veterans; and the AMVETS.

On June 7, 1989, the Subcommittee met and unanimously recommended to the full Committee H.R. 1199 and H.R. 1931, as amended.

On June 20, the full Committee met and unanimously recommended that H.R. 1199, as amended with the language of H.R. 1931, as amended, be reported to the House.

SUMMARY OF REPORTED BILL

The reported bill would:

(1) Condense the 8 current Department of Veterans Affairs (DVA) nurse pay grades into 4 pay grades. Each of the 4 new pay

grades would be comparable to the pay levels in Title 5, United States Code; as follows:

Title 38 Nurse Grade	*Title 5 Grade*
a. Entry grade	GS 6–10
b. Intermediate grade	GS 9–12
c. Senior grade	GS 12–14
d. Director grade	GS 14–16

(2) Divide each of the Title 38 nurse grades into 20 equal increments which would be known as steps. The rate of basic pay within a grade would be increased by such step increases under standards prescribed by the Secretary.

(3) Increase a nurse's salary by at least one step every 2 years for satisfactory performance if a salary increase has not otherwise been received during that time period.

(4) Provide that all promotions involving additional duty assignments be associated with at least a 1-step salary increase within grade.

(5) Provide that all future head nurses and existing head nurses receive a 2-step salary increase. A 2-step decrease in salary would occur when the nurse leaves such a position.

(6) Authorize the director of a medical center to provide a step increase within a grade or a cash bonus to a nurse with exceptional qualifications, experience, or achievement based upon the following criteria:

a. Service with relevant professional committees or groups;
b. Service in a responsible office in a professional nursing society;
c. Educational attainment including certification;
d. Publication of articles in professional journals;
e. Exemplary job performance; and
f. Other appropriate evidence of professional stature.

(7) Provide that a medical center director may hire a nurse at a rate of pay in excess of the minimum rate, but not to exceed the maximum rate, in each grade without prior approval from the Secretary in order to be competitive with the private sector, or to recruit a nurse with an essential specialized skill.

(8) Provide that the medical center director must document such hiring and provide the documentation in the next budget submission following the hiring.

(9) Provide that nurses transferring from one medical center to another may not be reduced in grade, but may be reduced in salary to conform with the pay structure at the medical center to which the nurse transfers.

(10) Eliminate the cap on overtime pay by permitting nurses to receive one and one-half times their hourly rate for overtime.

(11) Permit the Secretary to furnish certain procreative services to a married veteran (and, if necessary, the veteran's spouse) who has a service-connected disability which prevents or impairs the ability of the veteran and the veteran's spouse to conceive a child.

(12) Define qualifying procreative services as procreative services reasonable and necessary to overcome the effects of a service-connected disability.

BACKGROUND

NURSE RECRUITMENT

Shortage of nurses.—For several years, the Committee on Veterans' Affairs has been aware of serious and growing difficulties in the ability of Department of Veterans Affairs' (DVA) to attract and retain registered nurses (RNs). Evidence to document the difficulties can be divided into three general groups: DVA staffing levels compared to staffing levels at non-Federal facilities; number and duration of vacancies within authorized levels; and workload constraints due to staffing limitations.

On September 1, 1988, the Committee published its "Survey of Veterans' Administration Medical Centers" (House Committee Print No. 10, U.S. House of Representatives, 100th Congress). Two of the questions asked in the survey of all DVA medical centers were directed to the issue of recruitment and retention. Other survey questions were also relevant to recruitment because they concerned the funding of special salary rates to supplement the basic pay currently authorized for nurses. Medical center directors were asked to estimate the number of full time equivalent personnel (FTEE) and funds to support them which would be necessary to raise medical centers to staffing levels comparable with nearby non-Federal facilities. On the average, the medical centers reported that their RN staffing levels were 62.9 FTEE lower than these private-sector hospitals, a difference of 29 percent. When projected to the entire medical care system, approximately 10,064 RN FTEE would be needed to bring the DVA up to community levels.

The respondents to the survey also reported 2,400 vacancies in authorized DVA nurse positions nationwide. It should be noted that the vacancies ranged from one vacancy each in 5 medical centers to 181 vacancies at the medical center in West Los Angeles, California. Unquestionably, the nurse staffing problems have been exacerbated by the nationwide shortage of nurses, which is having a negative impact on the delivery of health care in both the public and private sectors. However, in light of the DVA's current situation of underfunding, the Department is at a distinct disadvantage in terms of wage rates to compete with the private sector in attracting nurses from an ever-dwindling pool of available professional nurses.

Prior to conducting its national survey, the Committee conducted site visits to 16 DVA medical centers (Staff Site Visits to Veterans' Administration Medical Centers, House Committee Print No. 14, U.S. House of Representatives, May 31, 1988). These visits revealed that although special salary rates were determined to be necessary, 12 out of the 16 hospitals showed that funding sources were inadequate to support the rates. Funds intended to meet the costs of special pay rates have largely come from replacement equipment and maintenance and repair accounts, leaving these latter needs unmet. This had at least two undesirable effects: first, vacancies exist for long periods and, second, the resultant workload from such understaffing has further eroded the Department's ability to retain nursing staff.

Special salary rates and overtime pay.—The Department of Veterans Affairs has the authority to implement special salary rates for categories of employees which the Secretary determines are difficult to recruit and retain. These special salary rates also help address differences in geographical costs of living. The DVA reports that 125 out of 172 medical centers have special salary rates in effect for nurses. The prevalence of the implementation of special salary rates certainly suggests the inadequacy of the Department's current salary structure, since the use of special rates has become the rule rather than the exception which Congress intended.

Current law authorizes overtime pay for service in excess of forty hours in an administrative workweek, or in excess of eight hours in a day. The rate of overtime pay is one and one-half times the hourly rate of basic pay up to the minimum rate of intermediate grade of the Nurse Pay Schedule ($20.81 per hour), thus effectively establishing a cap on such pay. During the Committee's April 12, 1989 hearing, The Nurses Organization of the Veterans' Administration (NOVA) presented testimony that the statutory cap on overtime pay was another disincentive to recruitment and retention of nurses. According to the NOVA testimony, some nurses at higher pay levels actually make less at the overtime rate than at their normal pay rate due to the cap on overtime pay. The NOVA testimony reported that nurses resist working overtime. This may result in a greater workload for the nurses who are on regular shifts and create further disincentives to retention. In some cases, nurses are given compensatory time in lieu of pay in the amount of one hour off for each hour of overtime worked. This last practice may further contribute to shortages of nursing staff. Many hospital directors have no recourse but to hire temporary nurses from private agencies at salaries three to four times the hourly rates paid to DVA registered nurses.

Effects of nurse shortage.—The Committee survey found that the number of beds "temporarily" closed as of June 30, 1988, was in excess of 13,000. The site visit report showed that about 14 percent of official operating beds were actually closed due to staffing problems, while the subsequent survey reported that about 30 percent of the beds were closed due to staff or funding shortages.

It also seems clear from Committee hearing records, that the capacity of the DVA medical system to deliver care has decreased substantially. The reports and testimony regarding staff, funding and bed levels are consistent in magnitude and direction to support this conclusion.

The Committee has also substantiated reports that new facility activations have been delayed, and in some instances, remain postponed due to funding and health care personnel shortages. Veterans' access to outpatient care has been critically reduced, and in the case of certain Category B and C veterans, completely denied.

Previous action to improve recruitment and retention.—The Committee on Veterans' Affairs reported legislation in the 100th Congress designed to address the shortage of professional nurses at DVA medical centers. Public Law 100–322 authorized the Department to pay RNs annual recruitment and retention bonuses of $2,000, $3,000, and $4,000 in return for commitments to work full-time for 2, 3, or 4 years, respectively, at health care facilities with

an RN shortage. Due to severe funding shortages as outlined above, the Secretary has yet to exercise such authority.

Other provisions included in Public Law 100–322 with regard to the RN shortage included: payment of Saturday premium pay to DVA nurses; expansion of eligibility for the DVA's Health Professional Scholarship Program to include members of disciplines who provide direct patient care services or services incident to direct patient care; establishment of a tuition reimbursement program, to be paid back through DVA employment, to full-time employees seeking a degree with a major in nursing; authorization to establish a child-care program for children of DVA employees at DVA facilities; and the requirement that Chiefs of the Nursing Services, or their designees, be members of all policymaking and fiscal committees at DVA health care facilities.

Even these actions have proved insufficient. At the April 12, 1988 hearing of the Subcommittee on Hospitals and Health Care the Chief Medical Director, Dr. John A. Gronvall stated:

> Significant problems exist with respect to the recruitment and retention of registered nurses to work in many of our facilities, and existing incentives may not be completely adequate to solve these problems.

(Testimony of Dr. Gronvall before the Subcommittee on Hospitals and Health Care, April 12, 1989, p. 2.).

With respect to the authorities thus far enacted, Dr. Gronvall stated:

> Thus, in approximately 125 facilities, we are using discretionary authority to establish special pay rates under section 4107(g). We are also exercising authority under section 4107 (e)(10) to raise premium rates where necessary to meet competition from community hospitals.
>
> Finally, Public Law 100–322 provided authority for us to expand premium pay for Saturday work, and provided for discretionary recruitment and retention bonuses, although the bonus authority has not been implemented due to lack of funds. Nonetheless, despite the enactment of these authorities, we continue to have problems in many locations.

PROCREATIVE SERVICES

At the May 4, 1988 Committee hearing, Department officials testified against legislation to provide services to help overcome the service-connected disability of a veteran which impairs the veteran's ability to conceive a child with the veteran's spouse. In the April 26, 1989, hearing, the Department again opposed similar legislation, although the legislation would not have authorized services involving donor gametes, in vitro fertilization, or the services of a surrogate gestational mother. On both occasions, the Department witness raised a number of "philosophical, ethical and practical issues" requiring attention should procreative services be furnished by the DVA. The General Counsel of the Department has advised the Chief Medical Director of these considerations with specific regard to reverse sterilization procedures and in vitro fertilization procedures, raising the issue of whether the term "disability"

for purposes of determining the authority of the DVA to provide services can encompass "both the underlying cause as well as the resultant inability to become pregant". (Memorandum to Chief Medical Director from the Acting General Counsel, January 23, 1985). In particular, the General Counsel expressed reservations concerning the Department's authority to provide medical services to the veteran's spouse even when such care would be required for successful treatment to overcome a procreative disability in the veteran.

Although the Committee notes that the Department of Veterans Affairs has not said it lacks the statutory authority, the Department seems unlikely to change its position in the absence of legislation.

Discussion of the Reported Bill

NURSE RECRUITMENT

H.R. 1199 as amended.—Section 2 of the reported bill would condense the present eight nurse pay grades into four, providing a broad salary range for each of the four grades. The first new pay grade would be labeled the Entry grade. The Entry grade would replace the current Junior and Associate grades and would have an annual salary range of $17,542–$34,136 (GS6–GS10). The second new pay grade would be labeled the Intermediate grade. The Intermediate grade would have a salary range of $23,846–$44,957 (GS9–GS12). The third new grade would be labeled the Senior grade. The Senior grade would replace the current senior and chief grades and would have a salary range of $34,580–$63,172 (GS12–GS14). The fourth new grade would be labeled the Director grade. The Director grade would replace the current assistant director and director grades and would have a salary range of $48,592–$82,500 (GS14–GS16). The intent of the Committee is to provide local hospital directors with the flexibility to meet local conditions with respect to the demand and costs of recruiting and retaining nurses. The Committee expects that directors will carefully assess local market conditions before establishing the pay rates.

The bill would divide each new grade into twenty equal increments known as steps. A nurse's salary would be increased by the hospital director at least one step every two years for satisfactory performance if a salary increase has not otherwise been received for that two year time period. All head nurses would receive a two step salary increase for as long as they remain in that position.

The committee does not intend that the steps reduce the flexibility of the medical center director in implementing the authority that would be provided under this legislation. Instead, the establishment of steps provides a measure of pay that may be used in devising differentials within a grade, or a cash bonus, in recognition of qualifications, experience, or achievement which the director determines exceed the standards for one of the four grades. The bill specifically notes the following examples of such special merit: publishing articles in professional journals; attaining clinical certification; completing courses pertinent to professional growth; participating in professional societies and groups; and exceeding job requirements.

Thus, the Committee expects that the reported bill would provide the hospital director with the flexibility to respond to local labor market needs by selecting a salary within these established ranges without prior DVA central office approval. The Committee recognizes that the existing lag-time occurring between the submission and approval of special salary rates has impeded the hospital director's ability to recruit and retain registered nurses.

The reported bill would provide the hospital director with the authority to increase salaries without prior approval in order to recruit and retain registered nurses, provide pay competitive with the private sector, meet current staffing needs and obtain nurses with essential specialized skills. Nurses transferring from one DVA medical center to another would not be demoted in grade but would be entitled to pay consistent with local conditions. Thus, no nurse would be permitted to accept employment in a hospital where the prevailing wages are high and then to retain the higher pay in a lower wage-rate area.

In order to insure accountability, the bill would require that a director, when exercising this authority, document why the decision to increase salaries was made and provide supporting documentation. This documentation must be provided to DVA Central Office in the budget submission for the subsequent fiscal year. If the hospital director determines the maximum rate of pay within one of the four pay bands is inadequate to meet local conditions, the director may request approval for special salary rates as currently established by law. Using this methodology, special salary rates would be restored, as Congress intended, for areas with exceptional recruitment and retention problems.

The reported bill would remove the limit on the rate of overtime pay in order that nurses may receive one and one-half times their hourly rate for overtime.

PROCREATIVE SERVICES

Section 3 of the reported bill would authorize the Secretary to provide "procreative services to the extent reasonably necessary to overcome the effects of a service-connected disability of the veteran which prevents or impairs the ability of the veteran and the veteran's spouse to conceive a child." It would, thus, be targeted to veterans whose eligibility for DVA medical services has always been the highest priority—those disabled in service.

The Committee expects that the Department would implement this authority only in cases where the inability to procreate is a function of the veteran's service-connected disability. In addition, the legislation would specifically allow services to the veteran's spouse only in the event and to the extent that overcoming the veteran's service connected procreative disability requires such services.

With respect to further practical issues raised by the DVA, the Committee believes that appropriate guidelines setting forth the conditions under which such services will be furnished can be developed. With regard to philosophical and ethical issues, the reported bill specifies services that would not be authorized under this legislation. First, the bill would limit the furnishing of such serv-

ices to the veteran and the veteran's spouse. Second, procedures using gametes from an individual other than the veteran and the veteran's spouse would not be included. Third, the procedure known as "in vitro fertilization", as well as the services of surrogate gestational mothers would not be included.

Section-by-Section Analysis

H.R. 1199

Section 2 of H.R. 1199 would completely restructure the DVA's nurse pay system to give the Department considerably more flexibility than it now has to ameliorate its problems recruiting and retaining registered nurses. Section 3 would add a new section 4107A to title 38, United States Code, to govern the grades, rates of pay, and administration of nurse pay. The measure would first compress DVA's current "eight grade" pay structure into four grades, each with 20 equal step increments. Each of the new grades would correspond to a specified range of grades on the title 5 General Schedule. Thus, the new "Entry Grade" would correspond to GS 6–10, the "Intermediate Grade" would correspond to GS 9–12, the "Senior Grade" would correspond to GS 14–16. The lowest and highest step in each grade would correspond to the lowest and highest step in the corresponding range of General Schedule grades.

Section 2 would also require promulgation of regulations to provide that nurses who perform satisfactorily must receive a step increase at least once every two years. If promoted within the grade, they must receive a step increase, and if promoted to a higher grade, they must receive a higher rate of pay than before the promotion. Individuals serving as head nurses would be paid at a rate two steps above what they would otherwise receive. The measure authorizes medical center directors to provide step promotions or cash bonuses to nurses with qualifications, experience, or achievements which exceed the standards for that nurse's grade.

Section 2 would also authorize the Secretary to permit medical center directors to appoint nurses at pay rates higher than would otherwise be applicable, if the director determines that a higher rate is necessary to hire nursing staff. A director may authorize the higher pay rate only if necessary to provide pay that is competitive with nurse pay in the local labor market, to achieve adequate staffing at the facility, or to recruit nurses with specialized skills. The director must document the higher rate of pay, and submit the documentation with the first budget submission made after the increased pay rate is authorized. If a nurse from a facility with such increased pay rates transfers to a facility that does not pay higher rates, it would be permissible to reduce that nurse's step within a grade, if necessary to be consistent with the pay structure at the new facility. That nurse's pay grade could not be reduced, however. Finally, section 2 would modify the existing limitation on the amount of overtime that may be paid to nurses. Current law permits payment of overtime at one and one-half times the nurse's basic pay rate, but caps the overtime rate at one and one-half times the basic rate for a nurse in intermediate grade,

unless the formal determination, based on a reasonably representative sampling, is made that an increase above the cap is needed to meet competition. This bill simply removes the cap.

Section 3 of H.R. 1199 would add a new subsection to 38 U.S.C. § 612 to authorize the VA to provide married veterans with certain procreative services to help the veteran overcome service-connected disabilities which impair the ability to conceive a child. If necessary, services may also be furnished to the spouses of those veterans. The measure would specifically preclude VA from providing or paying for in vitro fertilization, and from providing services involving a surrogate mother, or the gametes of any individual other than the veteran or the veteran's spouse. The committee contemplates that VA could provide various fertility testing services and artificial imsemination services under this provision.

Oversight Findings

No oversight findings have been submitted to the committee by the Committee on Government Operations.

Congressional Budget Office Cost Estimate

Congressional Budget Office,
Washington, DC, June 19, 1989.

Hon. G.V. (Sonny) Montgomery,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 1199, the Veterans Nurse Pay Act of 1989, as ordered reported by the House Committee on Veterans' Affairs, June 20, 1989. Because of the level of flexibility granted to individual directors of VA medical facilities by the bill, its cost cannot estimated precisely. However, we expect that the cost would be between $5–10 million a year.

This bill would replace the current eight-tiered pay structure for nurses in the Department of Veterans Affairs (VA) with a four-tiered structure. While the new pay structure would not, in and of itself, increase the salary of any VA nurses, it would allow medical center directors in areas with recruitment and retention problems to increase salaries above current law maximums. The number of directors who would use the expanded authority would be dependent on the availability of funds at individual centers. Based on the number of nurses currently paid at the maximum salary level, it is estimated that salary increases of $5–10 million would result from this provision.

H.R. 1199 would also provide medical services to married veterans whose service-connected disabilities prevent or impair the ability of the veteran and the veteran's spouse to conceive a child. Because the types of treatments authorized by the bill are very limited, this provision is estimated to cost less than $500,000 a year.

Sincerely,

Robert D. Reischauer,
Director.

Inflationary Impact Statement

The reported bill will have no inflationary impact.

Departmental Views

Department of Veterans Affairs,
Office of the Administrator of Veterans Affairs,
April 7, 1989, Washington, DC.

Hon. G.V. (Sonny) Montgomery,
Chairman, Committee on Veterans' Affairs,
Washington, DC.

Dear Mr. Chairman: We received your letter of March 17, 1989, requesting VA's views on H.R. 1199, a bill "To amend title 38, United States Code, to improve recruitment and retention of nurses in the Department of Veterans' Affairs by providing greater flexibility in the pay system for those nurses." We will be testifying on H.R. 1199 at your committee's April 12, 1989, hearing. Our prepared statement for the hearing, which will include a cost estimate for the bill, will serve as our report on the bill. That statement will, of course, be provided to the committee in advance of the hearing. Thank you for your patience in this matter.

Sincerely yours,

Edward J. Derwinski,
Secretary.

[The following excerpts were taken from the testimony of the Department's Chief Medical Director, John A. Gronvall, M.D., at a hearing on April 12, 1989.]

Mr. Chairman, I next turn to H.R. 1199, another bill aimed at assisting VA in the recruitment and retention of registered nurses. This bill would accomplish a significant restructuring of the VA's nurse pay system.

H.R. 1199

The approach taken in this bill is in some respects consistent with preliminary ideas our own nurse pay task force is developing. Again, however, we prefer that this task force continue its work and develop a proposed revision of the title 38 nurse pay system, and that the proposal be developed and reviewed through the normal legislative process.

The bill would add a new section 4107A to Chapter 73 of title 38, to govern the grades, rates of pay, and administration of nurse pay. The proposed new pay system would compress the current "eight grade" pay structure into four grades, each with 20 equal step increments. Each of the new grades would correspond to a specified range of grades on the title 5 General Schedule. Thus, the new "Entry Grade" would correspond to GS 6–10, the "Intermediate Grade" would correspond to GS 9–12, the "Senior Grade" would correspond to GS 12–14, and the "Director Grade" would correspond to GS 14–16. The lowest and highest step in each grade would correspond to the lowest and highest step on the corresponding range of General Schedule grades.

The new section 4107A would also provide that nurses who perform satisfactorily must receive a step increase at least once every

2 years. If promoted within the grade, they must receive a step increase, and if promoted to a higher grade, they must receive a higher rate of pay than before the promotion. Individuals serving as head nurses would be paid at a rate two steps above what they would otherwise receive. In a provision similar to existing authority, the measure gives medical center directors authority to provide step promotions or cash bonuses to nurses with qualifications, experience, or achievements which exceed the standards for that nurse's grade.

Another very significant provision of the bill would authorize the Secretary to permit medical center directors to appoint nurses at pay rates higher than would otherwise be applicable, if the director determines that a higher rate is necessary to hire nursing staff. A director may authorize the higher pay rate only if necessary to provide pay that is competitive with nurse pay in the local labor market, to achieve adequate staffing at the facility, or to recruit nurses with specialized skills. The director must justify the higher rate of pay in writing, and submit the justification with the first budget submission made after the increased pay rate is authorized. If a nurse from a facility with such increased pay rates transfers to a facility that does not pay higher rates, it would be permissible to reduce that nurse's step within a grade, if necessary to be consistent with the pay structure at the new facility. That nurse's pay grade could not be reduced, however.

A final provision in the bill would modify the existing limitation on the amount of overtime that may be paid to nurses. Current law permits payment of overtime at one and one-half times the nurses basic pay rate, but caps the overtime rate at one and one-half times the basic rate for a nurse in intermediate grade. This bill simply removes the cap.

Mr. Chairman, our task force is examining various proposals, including this one, for a new pay system for VA nurses. In general, we do believe that a revised, simplified schedule of pay, in lieu of the present complicated system of basic pay and special salary rates, may be preferable as long as the new system provides the flexibility to target resources to areas experiencing the most difficulty in recruiting and retaining nurses, and avoids pay benefits in geographic areas where upper pay bands are not necessary to meet market conditions.

We estimate the enactment of H.R. 1199 would result in additional costs of approximately $36.0 million in fiscal year 1990, and $198.0 million over 5 fiscal years. Again, because these additional costs are unfunded, the additional pay called for by this measure necessarily would have to come from existing salary funds.

H.R. 1931

DEPARTMENT OF VETERANS AFFAIRS,
OFFICE OF THE SECRETARY OF VETERANS AFFAIRS,
Washington, DC, May 22, 1989.

Hon. G.V. MONTGOMERY,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This will respond to your request for a report on H.R. 1931, a bill "[t]o amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to provide certain procreative services, and reimbursement of certain adoption expenses, for married veterans with service-connected disabilities."

We do not support enactment of this proposal. Without attempting to describe the bill's provisions in detail, we note that it would limit the scope of qualifying services by specifically ruling out, for example, in vitro fertilization and the services of a surrogate mother. It would authorize VA to pay up to $2,000 for expenses incurred in adopting a child and to limit total payments to any one veteran to $4,000. The bill would appear to authorize payments for expenses incurred in any legal adoption, including adoptions through a "private placement."

The bill would authorize VA to provide these services to any married veteran who has a service-connected disability which impairs the ability of the veteran or spouse to conceive a child.

We do note, in relation to prior legislation before this committee, that the measure narrows the scope of "procreative services" VA could furnish. Our preliminary analysis suggests, however, that it raises some of the same philosophical, ethical and practical issues we have confronted in prior legislation. As you know we have withheld our support from legislation which we viewed as placing VA in the position of regulating access to reproductive technology in the absence of societal consensus on the propriety of such a governmental role. Thus, while we are certainly supportive of making efficacious medical technology available to our veterans, we cannot escape the fact that authorizing procreative services represents more than simply providing a new service to veterans.

The bill also proposes for the first time that the VA subsidize adoption expenses for eligible veterans. We must caution that we have not had much opportunity to reflect on this far-reaching proposal. The implications, however, regarding the establishment of such a benefit are not insignificant.

Providing for such a benefit would take VA well beyond its long-standing role, as regards the service-connected disabled veteran, of providing compensation and benefits for that disability. Indeed, its aim goes well beyond the purposes served by other benefits established through the initiative of this subcommittee. The Department of Veterans Affairs is not prepared at this time to endorse that concept.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on H.R. 1931 to the Congress.

Sincerely,

EDWARD J. DERWINSKI,
Secretary.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * * * *

PART II—GENERAL BENEFITS

* * * * * * *

CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

* * * * * * *

Subchapter II—Hospital, Nursing Home or Domiciliary Care and Medical Treatment

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§ 612. Eligibility for outpatient services

(a) * * *

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(k) The Secretary may provide to a married veteran (and, if necessary, the veteran's spouse) procreative services to the extent reasonably necessary to overcome the effects of a service-connected disability of the veteran which prevents or impairs the ability of the veteran and the veteran's spouse to conceive a child. Such services may not include—

(1) procedures to conceive a child using gametes of an individual other than the veteran or the veteran's spouse;

(2) procedures to conceive a child through in vitro fertilization; or

(3) the services of a surrogate gestational mother.

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PART V—BOARDS AND DEPARTMENTS

* * * * * * *

CHAPTER 73—DEPARTMENT OF MEDICINE AND SURGERY

SUBCHAPTER I—ORGANIZATION; GENERAL

Sec.
4101. Functions of Department.
4102. Divisions of Department.
4103. Office of the Chief Medical Director.
4104. Additional appointments.
4105. Qualifications of appointees.
4106. Period of appointments; promotions.
4107. Grades and pay scales.
4107A. Nurses: grades, rates of pay, and administration of pay.

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Subchapter I—Organization; General

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§ 4107. Grades and pay scales

(a) * * *

* * * * * * *

(b)(1) The grades and annual ranges of rates of basic pay for positions provided for in paragraph (1) of section 4104 of this title shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as other authorized by law:

PHYSICIAN AND DENTIST SCHEDULE

Director grade.
Executive grade.
Chief grade.
Senior grade.
Intermediate grade.
Full grade.
Associate grade.

NURSE SCHEDULE

[Director grade.
[Assistant Director grade.
[Chief grade.
[Senior grade.
[Intermediate grade.
[Full grade.
[Associate grade.
[Junior grade.]
Entry grade.
Intermediate grade.
Senior grade.
Director grade.

* * * * * * *

[(e)(1) In addition to the rate of basic pay provided for nurses in subsection (b)(1) of this section, a nurse shall receive additional pay as provided by paragraphs (2) through (8) of this subsection.

[(2) A nurse performing service on a tour of duty, any part of which is within the period commencing at 6 postmeridian and

ending at 6 antemeridian, shall receive additional pay for each hour of service on such tour at a rate equal to 10 percent of the nurse's hourly rate of basic pay if at least four hours of such tour fall between 6 postmeridian and 6 antemeridian. When less than four hours of such tour fall between 6 postmeridian and 6 antemeridian, the nurse shall be paid the differential for each hour of service performed between those hours.

[(3) A nurse performing service on a tour of duty, any part of which is within the period commencing at midnight Friday and ending at midnight Sunday, shall receive additional pay for each hour of service on such tour at a rate equal to 25 percent of such nurse's hourly rate of basic pay.

[(4) A nurse performing service on a holiday designated by Federal statute or Executive order shall receive for each hour of such service the nurse's hourly rate of basic pay, plus additional pay at a rate equal to such hourly rate of basic pay, for that holiday service, including overtime service. Any service required to be performed by a nurse on such a designated holiday shall be deemed to be a minimum of two hours in duration.

[(5) A nurse performing officially ordered or approved hours of service in excess of forty hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional service; the overtime rates shall be one and one-half times such nurse's hourly rate of basic pay, not to exceed one and one-half times the hourly rate of basic pay for the minimum rate of Intermediate grade of the Nurse Schedule. For the purposes of this paragraph, overtime must be of at least fifteen minutes duration in a day to be creditable for overtime pay. Compensatory time off in lieu of pay for service performed under the provisions of this paragraph shall not be permitted, except as voluntarily requested in writing by the nurse in question. Any excess service performed under this paragraph on a day when service was not scheduled for such nurse, or for which such nurse is required to return to the nurse's place of employment, shall be deemed to be a minimum of two hours in duration. For the purposes of this paragraph, the period of a nurse's officially ordered or approved travel away from such nurse's duty station may not be considered to be hours of service unless—

[(A) such travel occurs during such nurse's tour of duty; or

[(B) such travel (i) involves the performance of services while traveling, (ii) is incident to travel that involves the performance of services while traveling, (iii) is carried out under arduous conditions as determined by the Administrator, or (iv) results from an event which could not be scheduled or controlled administratively.

[(6) For the purpose of computing the additional pay provided by paragraph (2), (3), (4), or (5) of this subsection, a nurse's hourly rate of basic pay shall be derived by dividing such nurse's annual rate of basic pay by two thousand and eighty.

[(7) When a nurse is entitled to two or more forms of additional pay under paragraph (2), (3), (4), or (5) for the same period of service, the amounts of such additional pay shall be computed separately on the basis of such nurse's hourly rate of basic pay, except that no overtime pay as provided in paragraph (5) shall be payable for

overtime service performed on a holiday designated by Federal statute or Executive order in addition to pay received under paragraph (4) for such service.

[(8) A nurse who is officially scheduled to be on call outside such nurse's regular hours or on a holiday designated by Federal statute or Executive order shall be paid for each hour of such on-call duty, except for such time as such nurse may be called back to work, at a rate equal to 10 per centum of the hourly rate for excess service as provided in paragraph (5) of this subsection.

[(9) Any additional pay paid pursuant to this subsection shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of subchapter IX of chapter 55, chapter 81, 83, or 87 of title 5, or other benefits based on basic pay.

[(10)(A) Notwithstanding any other provision of law and subject to subparagraph (B) of this paragraph, the Administrator may increase the rates of additional pay authorized under paragraph (2) through (8) of this subsection if the Administrator determines that it is necessary to do so in order to obtain or retain the services of nurses.

[(B) An increase under subparagraph (A)(i) of this paragraph in rates of additional pay (i) may be made at any specific Veterans' Administration health-care facility in order to provide nurses, or any category of nurses, at such facility additional pay in an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses at non-Federal health-care facilities in the same geographic area as such Veterans' Administration health-care facility (based upon a reasonably representative sampling of such non-Federal facilities), and (ii) may be made on a nationwide, local, or other geographic basis if the Administrator finds that such an increase is justified on the basis of a review of the need for such increase (based upon a reasonably representative sampling of non-Federal health-care facilities in the geographic area involved).]

* * * * * * *

[(h)(1) Notwithstanding any other provision of law but subject to paragraph (2) of this subsection, if the Administrator determines it to be necessary in order to obtain or retain the services of nurses at any Veterans' Administration health-care facility, the Administrator may provide, in the case of nurses appointed under this subchapter and employed at such facility, that such nurses who work two regularly scheduled twelve-hour tours of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) to have worked a full forty-hour basic workweek.

[(2)(A) Basic and additional pay for a nurse who is considered under paragraph (1) of this subsection to have worked a full forty-hour basic workweek shall be subject to subparagraphs (B) and (C) of this paragraph.

[(B) The hourly rate of basic pay for such a nurse for service performed as part of a regularly scheduled twelve-hour tour of duty within the period commencing at midnight Friday and ending

at midnight the following Sunday shall be derived by dividing the nurse's annual rate of basic pay by one thousand two hundred and forty-eight.

[(C)(i) Such a nurse who performs a period of service in excess of such nurse's regularly scheduled two twelve-hour tours of duty is entitled to overtime pay under subsection (e)(5) of this section, or other applicable law, for officially ordered or approved service performed in excess of eight hours on a day other than a Saturday or Sunday or in excess of twenty-four hours within the period commencing at midnight Friday and ending at midnight the following Sunday.

[(ii)(I) Except as provided in subdivision (II) of this division, a nurse to whom this paragraph is applicable is not entitled to additional pay under subsection (e) of this section, or other applicable law, for any period included in a regularly scheduled twelve-hour tour of duty.

[(II) If the Administrator determines it to be further necessary in order to obtain or retain the services of nurses at a particular facility, a nurse to whom this paragraph is applicable who performs service in excess of such nurse's regularly scheduled two twelve-hour tours of duty may be paid overtime pay under subsection (e)(5) of this section, or other applicable law, for all or part of the hours of officially ordered or approved service performed by such nurse in excess of forty hours during an administrative workweek.

[(3) A nurse described in paragraph (2)(A) of this subsection who is absent on approved sick leave or annual leave during a regularly scheduled twelve-hour tour of duty shall be charged for such leave at a rate of five hours of leave for three hours of absence.

[(4) The Administrator shall prescribe regulations for the implementation of this subsection.]

* * * * * * *

§ 4107A. Nurses: grades, rates of pay, and administration of pay

(a) The Secretary shall maintain four grade levels for nurses employed by the Department under section 4104(l) of this title. Those grade levels shall have the following relationships to pay grades under the General Schedule under title 5.

Nurse grades:	*GS Grades*
Entry grade	*GS 6–10*
Intermediate grade	*GS 9–12*
Senior grade	*GS 12–14*
Director grade	*GS 14–16*

(b) The rates of basic pay for those nurse grades shall, for each grade, be established pursuant to this section. The minimum and maximum rates of basic pay for each nurse grade shall be the lowest minimum, and the highest maximum, respectively, rate of pay for the GS grades corresponding to that nurse grade.

(c)(1) The range of basic pay for each nurse grade shall be divided into 20 equal increments, known as "steps". Rates of pay within a grade shall be established only as full steps. Any increase within a grade in the rate of basic pay payable to a nurse shall be by one or more of such step increments. The director of each medical center

may (subject to this section) determine the standards and criteria for such increases.

(2) Regulations prescribed under this section shall provide—

(A) that the rate of basic pay of each nurse of the Department employed under section 4104(l) of this title shall be increased at least one step increment in that nurse's grade not less often than every two years that the nurse holds that grade (unless the Secretary determines that the performance of the nurse during the preceding two years has not been satisfactory); and

(B) that whenever a nurse is given a new duty assignment which is a promotion, the rate of basic pay of that nurse shall be increased at least one step increment in that nurse's grade.

(3) A nurse of the Department serving in a head nurse position shall while so serving receive basic pay at a rate two steps above the rate that would otherwise be applicable to the nurse.

(d) A nurse who is promoted to the next higher nurse grade shall be appointed in that grade at a rate of basic pay that is greater than the rate of basic pay applicable to the nurse in the lower grade.

(e) Under regulations which the Secretary prescribes for the administration of this section, the director of a medical center of the Department may provide step promotions within a grade, or may pay a cash bonus, to a nurse employed at the medical center who has qualifications, experience, or achievement which the director determines exceed the standards for the nurse's grade. In making such a determination, the director shall consider the following:

(1) Service with relevant professional committees or groups.

(2) Service in a responsible office in a professional nursing society.

(3) Educational attainment (including certification).

(4) Publication of articles in professional journals.

(5) Exemplary job performance.

(6) Other appropriate evidence of professional stature.

(f)(1) The Secretary shall provide (in regulations prescribed for the administration of this section) that the director of a medical center of the Department, in appointing a person under section 4104(l) of this title as a nurse for employment at that medical center, may appoint that nurse at a rate of basic pay in excess of the minimum rate of basic pay applicable to the grade in which the appointment is made (but not in excess of the maximum rate of basic pay for that grade) without a requirement for prior approval at any higher level of authority within the Department if the director determines that it is necessary to do so in order to obtain the services of nurses employed under section 4104(l) of this title in that nurse grade at that medical center.

(2) Such a determination may be made by the director of a medical center only in order—

(A) to provide pay in an amount competitive with the amount of the same type of pay paid to nurses at non-Federal facilities in the same labor market;

(B) to achieve adequate staffing at the medical center concerned; or

(C) to recruit nurses with specialized skills, especially nurses with skills which are especially difficult or demanding.

(3) Whenever the director of a medical center exercises authority under this subsection without prior approval at a higher level of authority within the Department, the director shall—

(A) document in writing the reasons for employing the nurse concerned at a rate of pay in excess of the minimum rate of basic pay applicable to the grade in which the nurse is appointed (and shall retain that document on file); and

(B) in the first budget submission of the director prepared after the nurse is employed, include documentation for the need for such increased rates of basic pay.

(g) A nurse employed under section 4104(l) of this title who (without a break in employment) transfers from one medical center of the Department to another may not be reduced in grade. The rate of basic pay of such a nurse may be established at the new medical center in a manner consistent with the practices at that medical center for a nurse of that grade.

(h)(1) In addition to basic pay a nurse shall receive additional pay as provided by paragraphs (2) through (8) of this subsection.

(2) A nurse performing service on a tour of duty, any part of which is within the period commencing at 6 postmeridian and ending at 6 antemerdian, shall receive additional pay for each hour of service on such tour at a rate equal to 10 percent of the nurse's hourly rate of basic pay if at least four hours of such tour fall between 6 postmeridian and 6 antemeridian. When less than four hours of such tour fall between 6 postmeridian and 6 antemeridian, the nurse shall be paid the differential for each hour of service performed between those hours.

(3) A nurse performing service on a tour of duty, any part of which is within the period commencing at midnight Friday and ending at midnight Sunday, shall receive additional pay for each hour of service on such tour at a rate equal to 25 percent of such nurse's hourly rate of basic pay.

(4) A nurse performing service on a holiday designated by Federal statute or Executive order shall receive for each hour of such service the nurse's hourly rate of basic pay, plus additional pay at a rate equal to such hourly rate of basic pay, for that holiday service, including overtime service. Any service required to be performed by a nurse on such a designated holiday shall be deemed to be a minimum of two hours in duration.

(5) A nurse performing officially ordered or approved hours of service in excess of forty hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional service; the overtime rates shall be one and one-half times such nurse's hourly rate of basic pay. For the purposes of this paragraph, overtime must be of at least fifteen minutes duration in a day to be creditable for overtime pay. Compensatory time off in lieu of pay for service performed under the provisions of this paragraph shall not be permitted, except as voluntarily requested in writing by the nurse in question. Any excess service performed under this paragraph on a day when service was not scheduled for such nurse, or for which such nurse is required to return to the nurse's place of employment, shall be deemed to be a minimum of two hours in duration. For the purposes of this paragraph, the period of a nurse's officially ordered or approved travel away from

such nurse's duty station may not be considered to be hours of service unless—

(A) such travel occurs during such nurse's tour of duty; or

(B) such travel (i) involves the performance of services while traveling, (ii) is incident to travel that involves the performance of serivces while traveling, (iii) is carried out under arduous conditions as determined by the Administrator, or (iv) results from an event which could not be scheduled or controlled administratively.

(6) For the purpose of computing the additional pay provided by paragraph (2), (3), (4), or (5) of this subsection, a nurse's hourly rate of basic pay shall be derived by dividing such nurse's annual rate of basic pay by two thousand and eighty.

(7) When a nurse is entitled to two or more forms of additional pay under paragraph (2), (3), (4), or (5) for the same period of service, the amounts of such additional pay shall be computed separately on the basis of such nurse's hourly rate of basic pay, except that no overtime pay as provided in paragraph (5) shall be payable for overtime service performed on a holiday designated by Federal statute or Executive order in addition to pay received under paragraph (4) for such service.

(8) A nurse who is officially scheduled to be on call outside such nurse's regular hours or on a holiday designated by Federal statute or Executive order shall be paid for each hour of such on-call duty, except for such time as such nurse may be called back to work, at a rate equal to 10 per centum of the hourly rate for excess service as provided in paragraph (5) of this subsection.

(9) Any additional pay paid pursuant to this subsection shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of subchapter IX of chapter 55, chapter 81, 83, or 87 of title 5, or other benefits based on basic pay.

(10)(A) Notwithstanding any other provision of law and subject to subparagraph (B) of this paragraph, the Administrator may increase the rates of additional pay authorized under paragraph (2) through (8) of this subsection if the Administrator determines that it is necessary to do so in order to obtain or retain the services of nurses.

(B) An increase under subparagraph (A)(i) of this paragraph in rates of additional pay (i) may be made at any specific Veterans' Administration health-care facility in order to provide nurses, or any category of nurses, at such facility additional pay in an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses at non-Federal health-care facilities in the same geographic area as such Veterans' Administration health-care facility (based upon a reasonably representative sampling of such non-Federal facilities), and (ii) may be made on a nationwide, local, or other geographic basis if the Administrator finds that such an increase is justified on the basis of a review of the need for such increase (based upon a reasonably representative sampling of non-Federal health-care facilities in the geographic area involved).

(i)(1) Notwithstanding any other provision of law but subject to paragraph (2) of this subsection, if the Administrator determines it to be necessary in order to obtain or retain the services of nurses at

any Veterans' Administration health-care facility, the Administrator may provide, in the case of nurses appointed under this subchapter and employed at such facility, that such nurses who work two regularly scheduled twelve-hour tours of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) to have worked a full forty-hour basic workweek.

(2)(A) Basic and additional pay for a nurse who is considered under paragraph (1) of this subsection to have worked a full forty-hour basic workweek shall be subject to subparagraphs (B) and (C) of this paragraph.

(B) The hourly rate of basic pay for such a nurse for service performed as part of a regularly scheduled twelve-hour tour of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be derived by dividing the nurse's annual rate of basic pay by 1,248.

(C)(i) Such a nurse who performs a period of service in excess of such nurse's regularly scheduled two twelve-hour tours of duty is entitled to overtime pay under subsection (h)(5) of this section, or other applicable law, for officially ordered or approved service performed in excess of eight hours on a day other than a Saturday or Sunday or in excess of twenty-four hours within the period commencing at midnight Friday and ending at midnight the following Sunday.

(ii)(I) Except as provided in subdivision (II) of this division, a nurse to whom this paragraph is applicable is not entitled to additional pay under subsection (h) of this section, or other applicable law, for any period included in a regularly scheduled twelve-hour tour of duty.

(II) If the Administrator determines it to be further necessary in order to obtain or retain the services of nurses at a particular facility, a nurse to whom this paragraph is applicable who performs service in excess of such nurse's regularly scheduled two twelve-hour tours of duty may be paid overtime pay under subsection (h)(5) of this section, or other applicable law, for all or part of the hours of officially ordered or approved service performed by such nurse in excess of forty hours during an administrative workweek.

(3) A nurse described in paragraph (2)(A) of this subsection who is absent on approved sick leave or annual leave during a regularly scheduled twelve-hour tour of duty shall be charged for such leave at a rate of five hours of leave for three hours of absence.

(4) The Administrator shall prescribe regulations for the implementation of this subsection.

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